

#### Members

Sen. Joseph Zakas, Chairperson  
Sen. Murray Clark  
Sen. Rose Antich-Carr  
Rep. Ralph Foley, Vice-Chairperson  
Rep. Eric Koch  
Rep. Robert Kuzman  
Tim Sendak  
Dave Pendergast  
Tom Hardin  
Chris Colpaert  
Kris Fruehwald  
Dan Reeves  
Jim Martin  
Ora Kincaid  
Joseph H. Davis  
Judge Tom Lowe



## PROBATE CODE STUDY COMMISSION

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Ross Hooten, Attorney for the Commission

Authority: IC 2-5-16-2

### MEETING MINUTES<sup>1</sup>

Meeting Date: October 6, 2005  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., 431  
Meeting City: Indianapolis, Indiana  
Meeting Number: 3

**Members Present:** Sen. Joseph Zakas, Chairperson; Rep. Ralph Foley, Vice-Chairperson; Rep. Eric Koch; Rep. Robert Kuzman; Dave Pendergast; Tom Hardin; Kris Fruehwald; Dan Reeves; Jim Martin; Ora Kincaid; Joseph H. Davis; Judge Tom Lowe.

**Members Absent:** Sen. Murray Clark; Sen. Rose Antich-Carr; Tim Sendak; Chris Colpaert.

#### I. Call to Order and Introduction of Members

Senator Joseph Zakas, Chairperson of the Commission, called the meeting to order. Senator Zakas directed the members to the agenda for the meeting and indicated that it would be devoted to consideration and discussion of preliminary draft legislation recommended to the Commission by the Probate, Trust, and Real Property Section of the Indiana State Bar Association as well as additional proposals made by Commission members. He also indicated that the Commission would be considering its final report to the Legislative Council.

#### II. Consideration of Preliminary Draft Legislation

The following preliminary draft (PD) legislation was considered and discussed by the Commission. Descriptions of each PD along with actions taken by the Commission are provided below.

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<sup>1</sup> Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

**PD 3033 (Exhibit 1)**

PD 3033 would remove a provision of current law that prevents individuals who are adopted as adults from being considered Class A transferees for purposes of the Inheritance Tax. By consent of the Commission members, PD 3033 was amended to change the effective date from July 1, 2006, to July 1, 2005. PD 3033 as amended was recommended to the General Assembly by voice vote.

**PD 3034 (Exhibit 2)**

PD 3034 would increase the Class B transferee Inheritance Tax exemption from \$500 to \$20,000 and the Class C transferee Inheritance Tax exemption from \$100 to \$10,000. Representative Kuzman and Senator Zakas requested an estimate of the fiscal impact of this proposal. Jim Landers, Fiscal Analyst for the Commission, estimated that the proposal could result in a net loss to the state of about \$13.5 M annually beginning in FY 2008, with the revenue loss to counties totaling about \$1.1 M annually beginning in FY 2008. PD 3034 was recommended to the General Assembly by voice vote.

**PD 3042 (Exhibit 3)**

PD 3042 would provide that income earned by a trust becomes a part of the principal and is not distributed to the beneficiaries of specific property under the Uniform Principal and Income Act. PD 3042 was recommended to the General Assembly by voice vote.

**PD 3047 (Exhibit 4)**

PD 3047 would specify additional powers that a personal representative may exercise without order of the court in the administration of an unsupervised estate. PD 3047 was recommended to the General Assembly by voice vote.

**PD 3157 (Exhibit 5)**

PD 3157 would provide that a surviving subsequent childless spouse who takes against the will of the decedent is entitled to take 1/3 of the net personal estate and an additional amount equal to 25% of the fair market value of the decedent's real property minus liens and encumbrances. The Commission did not take action on PD 3157.

**PD 3158 (Exhibit 6)**

PD 3158 would specify that a trustee may exercise a power that conflicts with an individual interest of the trustee if the beneficiaries do not object to the exercise of the power or if the exercise of the power is specifically authorized by the terms of the trust. PD 3158 was recommended to the General Assembly by voice vote.

**PD 3163 (Exhibit 7)**

PD 3163 would increase the maximum gross value of a probate estate that may be settled without court administration from \$25,000 to \$50,000. By consent of the Commission members, PD 3163 was amended to change some of the language required in a small estate affidavit. PD 3163 as amended was recommended to the General Assembly by voice vote.

**PD 3165 (Exhibit 8)**

PD 3165 would increase the current \$1,000 Inheritance Tax deduction for the purchase of a memorial for the decedent. Senator Zakas requested an estimate of the fiscal impact of this proposal. Jim Landers, Fiscal Analyst for the Commission, estimated that the proposal to increase the maximum deduction to \$2,500 could potentially reduce state and county revenue by \$270,000 to \$400,000 annually beginning in FY 2008. He indicated that this is based on the average cost of memorials ranging from about \$2,000 to \$3,000. He also indicated that increasing the maximum deduction to \$5,000 could reduce state and county revenue on the top range by about \$540,000 annually. By consent of the Commission members, PD 3165 was amended to change the new maximum deduction from \$2,500 to \$5,000. PD 3165 as amended was recommended to the General Assembly by voice vote.

#### **PD 3167 (Exhibit 9)**

PD 3167 would increase the surviving spouse allowance from \$25,000 to \$50,000. The Commission failed to make a recommendation on PD 3167 by roll call vote, 4-7.

#### **PD 3179 (Exhibit 10)**

PD 3179 would remove the authority of a principal to grant health care powers to an attorney in fact under the Power of Attorney Law after June 30, 2006, and would specify that the current health care powers described in the Power of Attorney Law apply only to documents executed before July 1, 2006. PD 3179 would also create a new category of powers described as "post mortem powers," allowing a principal to grant an attorney in fact the power to make anatomical gifts, request an autopsy, or make plans to dispose of the principal's body. It also would specifically authorize the appointment of a health care representative to confer upon the health care representative certain powers that a principal may currently grant to an attorney in fact. It also would set forth within the Health Care Representative Law the language that is: (1) currently set forth only in the Power of Attorney Law and merely incorporated by reference in the Health Care Representative Law; and (2) necessary to authorize a health care representative to consent to the withholding or withdrawing of health care from a terminally ill patient.

The Commission did not take action on PD 3179 but recommended by voice vote that the Indiana State Bar Association utilize PD 3179 as a starting point to continue studying these issues and perfect draft legislation for the Commission to consider in 2006.

#### **PD 3187 (Exhibit 11)**

PD 3187 would provide that a surviving subsequent childless spouse who takes against the will of the decedent is entitled to take 1/3 of the net personal estate and an additional amount equal to 25% of the fair market value of the decedent's real property minus liens and encumbrances. By consent of the Commission members, PD 3187 was amended so that the format of the surviving spouse allowance calculation is the same in the elective share provision as in the intestate succession provision. PD 3187 as amended was recommended to the General Assembly by voice vote.

#### **PD 3192 (Exhibit 12)**

PD 3192 would set forth procedures for an individual to authorize the individual's health care representative to consent to or refuse life prolonging procedures contrary to the instructions in the individual's living will declaration or life prolonging procedures declaration. PD 3192 would also specify that a health care provider must consult with a health care representative concerning the health care of the authorizing individual. It also would allow a living will

declaration to include the name of a physician whom the declarant believes will honor the declaration in the event that an attending physician seeks to transfer the declarant to another physician.

The Commission heard public testimony concerning PD 3192. Ms. Heather Macek, testified on behalf of the Indiana Hospital and Heath Association. The Association opposed each aspect of the proposed legislation. Ms. Macek restated the Association's position that the current statutory structure is working well and that changes are not necessary.

Ms. Mary Hill, Director of Ethics Integration at St. Vincent Hospital, also testified that the proposed changes are not necessary. A lengthy discussion ensued between Ms. Hill and the Commission about some of the particular provisions of the draft. However, the discussion did not result in any agreed-upon changes to the draft.

The Commission did not take action on PD 3192 but recommended by voice vote that the Indiana State Bar Association utilize PD 3192 as a starting point to continue studying these issues and perfect draft legislation for the Commission to consider in 2006.

### **PD 3217 (Exhibit 13)**

PD 3217 would provide that a trust is entitled to certain property tax deductions for real property owned by the trust if the property is occupied by an individual who has a beneficial interest in the trust, is considered to have a life estate in the real property, and otherwise qualifies for the deduction; and providing that the trustee of a trust to which an interest in real property is transferred is considered the insured owner under a title insurance policy issued for the interest in real property if the transfer meets certain conditions. By consent of the Commission members, PD 3217 was amended to clarify that the county auditor can determine that an individual has a beneficial interest as verified in the body of the deed or otherwise. PD 3163 as amended was recommended to the General Assembly by voice vote.

### **III. Other Actions**

The Commission had a brief discussion regarding the elimination of the Inheritance Tax and, by voice vote, approved a motion by Senator Zakas to state the Commission's support for repeal of the Inheritance Tax.

### **IV. Commission Report to Legislative Council**

A draft of the Commission's final report to the Legislative Council was distributed to members by Ross Hooten, Attorney for the Commission. The Commission, by consent, adopted the draft report incorporating pertinent changes as a result of the October 6, 2005, meeting as the final report of the Commission to be transmitted to the Legislative Council.

### **V. Adjournment**

Senator Zakas adjourned the meeting at 12:20 p.m.